MONTANA LEGISLATIVE HISTORY

Chapter 27 ~~19~~ 2001

Bill H 235 S _____ Original bill & history ✓ C

H. Committee on Bus & Labor		S. Committee on Bus & Labor	
Hearing Date(s) _____	___C	Hearing Date(s) _____	___C
1/16	✓C	2/6	~~✓C~~
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 1/16	✓C	2/6	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

HB 235 Introduced by R. Brown *LC1066 Drafter: B. Campbell*

Revise Use of Business Name Identifiers Registered with State

By Request of Secretary of State

1/10	Introduced		
1/10	Referred to Business and Labor		
1/16	Hearing		
1/17	Committee Executive Action--Bill Passed	19	0
1/17	Committee Report--Bill Passed		
1/18	2nd Reading Passed	99	0
1/19	3rd Reading Passed	99	1
	Transmitted to Senate		
1/22	Referred to Business and Labor		
2/06	Hearing		
2/06	Committee Executive Action--Bill Concurred	9	0
2/06	Committee Report--Bill Concurred		
2/12	2nd Reading Concurred on Voice Vote	50	0
2/13	3rd Reading Concurred	50	0
	Returned to House		
2/15	Sent to Enrolling		
2/16	Returned from Enrolling		
2/20	Signed by Speaker		
2/22	Signed by President		
2/22	Transmitted to Governor		
3/01	Signed by Governor		
3/01	Chapter Number Assigned		
	Chapter Number 27		
	Effective Date: 10/01/2001 - All Sections		

HB 236 Introduced by Himmelberger *LC1349 Drafter: Petesch*

Fund Special Nonrecurring Tourism Related Events -- Lodging Tax Allocation

12/27	Fiscal Note Needed		
1/10	Introduced		
1/10	Referred to Taxation		
1/10	Fiscal Note Requested		
1/15	Fiscal Note Received		
1/16	Fiscal Note Printed		
1/23	Hearing		
3/13	Committee Executive Action--Bill Passed as Amended	11	9
3/13	Committee Report--Bill Passed as Amended		
3/19	Revised Fiscal Note Requested		
3/23	Revised Fiscal Note Received		
3/27	Revised Fiscal Note Printed		
3/29	Missed Deadline for Revenue Bill Transmittal		

HB 237 Introduced by Carney *LC0748 Drafter: Fox*

Voluntary Home Care Registry

11/30	Fiscal Note Needed		
1/10	Introduced		
1/10	Referred to Judiciary		
1/15	Rereferred to Human Services		
2/07	Hearing		

H BILL NO. 235

INTRODUCED BY Roy Brown
(Primary Sponsor)

BY REQUEST OF THE SECRETARY OF STATE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY PROHIBITING THE USE OF BUSINESS NAME IDENTIFIERS OR OTHER LANGUAGE IN THE NAME, TITLE, OR ASSUMED NAME OF A BUSINESS ENTITY THAT WOULD STATE OR IMPLY THAT THE BUSINESS ENTITY IS A TYPE OF ENTITY OTHER THAN THE TYPE THAT IT IS; DEFINING "BUSINESS NAME IDENTIFIER"; AND AMENDING SECTIONS 30-13-201, 30-13-202, 35-1-308, 35-2-305, 35-4-206, 35-8-103, 35-10-703, AND 35-12-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-13-201, MCA, is amended to read:

"30-13-201. Definitions. As used in this part, the following definitions apply:

(1) "Assumed business name" means~~:~~

~~(a)~~ any business name other than the full, true, and correct name of a person~~; or~~

~~(b) the full, true, and correct name of a limited liability partnership~~.

(2) "Business name identifier" means a word or words used by a business entity in its name or title that describes the type or form of its business. Business name identifiers include but are not limited to corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, and abbreviations of those terms.

~~(2)~~(3) "Person" means any individual, partnership, corporation, limited partnership, limited liability company, limited liability partnership, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"30-13-202. Registration of assumed business name -- when prohibited. (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name ~~which~~ THAT is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company

name, limited liability partnership name, trademark, or service mark registered or reserved with the secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) ~~When the applicant is other than a corporation, limited partnership, limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words.~~ An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is."

Section 3. Section 35-1-308, MCA, is amended to read:

"35-1-308. Corporate name. (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; ~~and~~

(b) may not contain business name identifiers, as defined in 30-13-201, or language that states or implies that the corporation is a business other than a corporation; and

~~(b)~~(c) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, limited liability company, or limited partnership may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership that is used in this state if the other corporation, limited liability company, or limited partnership is incorporated or authorized to transact business in this state and the proposed user corporation, limited liability company, or limited partnership:

(a) has merged with the other corporation, limited liability company, or limited partnership;

(b) has been formed by reorganization of the other corporation, limited liability company, or limited partnership;

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, limited liability company, or limited partnership; or

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names."

Section 4. Section 35-2-305, MCA, is amended to read:

"35-2-305. Corporate name. (1) (a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its articles of incorporation.

(b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the corporation is an entity other than a nonprofit corporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 5. Section 35-4-206, MCA, is amended to read:

"35-4-206. Corporate name. The name of a domestic or foreign professional corporation:

(1) (a) (i) except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; and

(ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of ~~such~~ the other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make ~~such~~ the name distinguishable from ~~such~~ the other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 6. Section 35-8-103, MCA, is amended to read:

"35-8-103. Name. (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not

contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

(4) Contests over names registered under this section are governed by 35-1-310."

Section 7. Section 35-10-703, MCA, is amended to read:

"35-10-703. Name of limited liability partnerships. (1) The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

(2) The name of a limited liability partnership may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability partnership is other than a limited liability partnership."

Section 8. Section 35-12-505, MCA, is amended to read:

"35-12-505. Name. (1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and

~~(c)~~(d) must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308."

- END -

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 16, 2001 at 8:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Kathleen Galvin-Halcro (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Donald Steinbeisser (R)
Rep. Brett Tramelli (D)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)
Rep. Bob Lawson (R)
Rep. Allen Rome (R)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB235, HB230, HB234, HB245, HB255, 1/15/2001
Executive Action: HB 136, HB145, HB235, HB255

{Tape : 1; Side : A; Approx. Time Counter : 0}

HEARING ON HEARING ON HB235

Sponsor: **REP. ROY BROWN. HD14, Billings**

Proponents: **Janice Doggett, Counsel, Secretary of State**

Opponents: **None**

Opening Statement by Sponsor:

REP. ROY BROWN, HD 14, Billings, said this is a bill requested by the Secretary of State's office which prohibits business name identifiers from stating or implying a business is a different type of entity than it is.

Proponents' Testimony: **Ms. Doggett** said a name identifier should indicate what the business is and the language of the previous statute did not accomplish this. The new bill clarifies it.

Opponents' Testimony: None

Questions from Committee Members and Responses:

REP. GALLIK asked **Ms. Doggett** what was the problem with the case she cited. She said the business had started as a partnership and had involved into a limited liability corporation. She said the name should reflect the type of entity the business was. She said the law was not concerned with the type of product sold.

Closing by Sponsor:

REP. BROWN urged the committee to pass the bill.

HEARING ON HEARING ON HB 230

Sponsor: **REP. WILLIAM PRICE, HD94, Lewistown**

Proponents: None

Opponents: **Gail Abercrombie, Montana Petroleum Association**
Don Allen, self

Opening Statement by Sponsor:

REP. WILLIAM PRICE, HD94, Lewistown, said the bill was initiated by one of his constituents. He said several informational witnesses were present to answer questions. The bill would

REP. LAIBLE asked how **REP. HARRIS** would compensate the individuals who suffered the decrease in value of their license. **REP. HARRIS** said perhaps the fee amount should be increased. He said the bill is designed to increase competition.

Closing by Sponsor:

REP. HARRIS said it was only natural those individuals who owned a valuable license would want to decrease competition. He said he fully understood and $75,000 was probably too low a fee.

{Tape : 4; Side : A; Approx. Time Counter : 7.5}

EXECUTIVE ACTION ON HB255

Motion: **REP. LAWSON** moved that **HB255 DO PASS.**

Discussion: **REP. LAWSON** said he intended to vote no on the motion.
Substitute Motion/Vote: **REP. MATTHEWS** made a substitute motion that **HB255 BE TABLED. Substitute motion carried unanimously.**

EXECUTIVE ACTION ON 235

Motion/Vote: **REP. BROWN** moved that **HB235 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON 136

Motion/Vote: **REP. GALLIK** moved that **HB136 BE TABLED. Motion carried unanimously.**

EXECUTIVE ACTION ON 145

Motion/Vote: **REP. LAWSON** moved that **HB145 DO PASS AS AMENDED. Motion carried unanimously.**

ADJOURNMENT

HOUSE STANDING COMMITTEE REPORT

January 16, 2001

Mr. Speaker:

We, your committee on **Business and Labor** report that **House Bill 235** (first reading copy – white) **do pass**.

Signed: _____
Representative Joe McKenney, Chair

- END -

Committee Vote:
Yes 19, No 0.

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1/17 mp 14

HOUSE OF REPRESENTATIVES
ROLL CALL

HOUSE BUSINESS AND LABOR COMMITTEE

DATE JAN. 15, 2001

NAME	PRESENT	ABSENT	EXCUSED
Rep. Joe McKenney	✓		
Rep. Gary Matthews	✓		
Rep. Roy Brown	✓		
Rep. Kathleen Galvin-Halcro	✓		
Rep. Carol Juneau	✓		
Rep. Rick Laible	✓		
Rep. John Musgrove	✓		
Rep. Nancy Rice-Fritz	✓		
Rep. Don Steinbeisser	✓		
Rep. Jim Whitaker	✓		
Rep. Rod Bitney			✓
Rep. Sylvia Bookout-Reinicke	✓		
Rep. Dave Gallik	✓		
Rep. Dennis Himmelberger	✓		
Rep. Jim Keane	✓		
Rep. Bob Lawson			✓
Rep. Bill Price	✓		
Rep. Brett Tramelli	✓		
Rep. Allen Rome			✓

House of Representatives

Roll Call Vote

BUSINESS & LABOR COMMITTEE

DATE JAN. 16, 2001 Bill NO. HB 235 NUMBER 19-0 PASS

MOTION: REP BROWN MOVE DO PASS

VOICE VOTE

Name	AYE	NO
Rod Bitney, V.C., Majority (R)		
Gary Matthews, V.C. , Minority (D)		
Roy Brown (R)		
Dave Gallik (D)		
Kathleen Galvin-Halcro (D)		
Dennis Himmelberger (R)		
Carol Juneau (D)		
Jim Keane (D)		
Rick Laible (R)		
Bob Lawson (R)		
Nancy Rice-Fritz (D)		
John Musgrove (D)		
Bill Price (R)		
Sylvia Bookout-Reinicke (R)		
Allen Rome (R)		
Don Steinbeisser (R)		
Brett Tramelli (D)		
Jim Whitaker (R)		
Joe McKenney (R) Chairman		
Count	19	0

MONTANA HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Business and Labor Committee

DATE JAN. 16, 2001

BILL NO. HB 235 SPONSOR(S) REP. BROWN

" business name identifiers "

TYPE

PROPONENT (P) OPPONENT (O) INFORMATIONAL (I)

PLEASE PRINT

PLEASE CIRCLE	NAME	ADDRESS	REPRESENTING
(P) O I	Jamie Doggett	Hel	SOS
(P) O I	Mike O'Brien	Helena	SOS
(P) O I	JOHN CADBY	"	MT BANKERS ASSOC.
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Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony

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MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 6, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:
Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Dale Berry (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 292, 2/3/2001; HB 235, 2/3/2001; HB 220, 2/3/2001
Executive Action: HB 235; HB 155; SB 80; SB 141; HB 220; SB 299

Dave Waldenberg said minor repairs can be done, but a line is crossed when they break into the piping and into the potable water supply.

SENATOR BUTCHER asked if a plumber would have to be hired to put in a hot water heater.

Dave Waldenberg said as a private citizen in your own home you could put the water heater in yourself, but as a handyman or appliance dealer they couldn't.

CHAIRMAN TAYLOR asked how this would be enforced.

Jerry Lyford said there are enforcement officers already in place to enforce this law.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 23.7}

SENATOR MIKE SPRAGUE, SD 6, BILLINGS, stated that the homeowner is always able to do his own plumbing.

HEARING ON HB 235

Sponsor: **REPRESENTATIVE ROY BROWN, HD 14, BILLINGS**

Proponents: **Michael O'Brien, Secretary of States Office**

Opponents: None

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 27.8}

REPRESENTATIVE ROY BROWN, HD 14, BILLINGS, said this bill is to prohibit business name identifiers other than the actual name of the business identity. For example, if they are a corporation they can't call themselves a limited partnership.

Proponents' Testimony:

Michael O'Brien, Secretary of State's Office, said this stemmed from a case where a company was called a corporation, but it was functioning as a limited partnership. It was taken to court and the judge said there was no law against this. He said this is common sense legislation to clarify the law.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

{Tape : 1; Side : B; Approx. Time Counter : 3.6}

REPRESENTATIVE ROY BROWN, HD 14, BILLINGS, closed without comment.

EXECUTIVE ACTION ON HB 235

Motion/Vote: **SEN. MAHLUM** moved that **HB 235 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON HB 155

Motion/Vote: **SEN. SPRAGUE** moved that **HB 155 BE CONCURRED IN. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 80

Motion/Vote: **SEN. MAHLUM** moved that **SB 80 DO PASS. Motion carried unanimously.**

EXECUTIVE ACTION ON SB 141

Motion: **SEN. COCCHIARELLA** moved **AMENDMENT TO SB 141. EXHIBIT(bus30a03)**

Discussion: **SENATOR MAHLUM** said he thinks this a good bill for small business. **CHAIRMAN TAYLOR** said you have to let the person know when you put something in their file. Unintended consequences could come from this bill. **SENATOR BERRY** said it should be made clear that it is the person whose file it is that is able to look at the file. **SENATOR SPRAGUE** said the files need to be kept up to date, not just a collection file. **SENATOR COCCHIARELLA** thinks this clearly says it is the employee who gets to see the file. **Bart Campbell** suggested a conceptual amendment.

Vote: **Motion carried unanimously.**

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL

DATE Feb 6, 2001

NAME	PRESENT	ABSENT	EXCUSED
SENATOR DALE BERRY			✓
SENATOR ED BUTCHER	✓		
SENATOR VICKI COCCHIARELLA	✓		
SENATOR SAM KITZENBERG	✓		
SENATOR DALE MAHLUM	✓		
SENATOR GLENN ROUSH	✓		
SENATOR DON RYAN	✓		
SENATOR MIKE SPRAGUE, VICE CHAIR	✓		
SENATOR MIKE TAYLOR, CHAIR	✓		

MONTANA SENATE
2001 LEGISLATURE
BUSINESS AND LABOR COMMITTEE
ROLL CALL VOTE

DATE 2-6-2001 BILL NO. #B 235 NUMBER 1

MOTION: Sen Sprague - Moved DO Concur

(Sen Sprague to carry)

NAME	AYE	NO
SENATOR DALE BERRY		
SENATOR ED BUTCHER		
SENATOR VICKI COCCHIARELLA		
SENATOR SAM KITZENBERG		
SENATOR DALE MAHLUM		
SENATOR GLENN ROUSH		
SENATOR DON RYAN		
SENATOR MIKE SPRAGUE, VICE CHAIR		
SENATOR MIKE TAYLOR, CHAIR		

DATE 2-6-2001

SENATE COMMITTEE ON Business & Labor

BILLS BEING HEARD TODAY: SB292, HB235, HB220

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Carl Schweitzer	457-1374	Associated Plumbing & Heating Contr	SB292	✓	
Dave Waldenberg	453-2362	Assoc. Plbg Htg & Cooling Contr.	SB292	✓	
Jerry Lyford	253-8005	Mt. State Board Plumb.	SB292	✓	
Bob Pyfer	442-9081	MT Credit Unions League	HB220	✓	
Jo Hawkins	443-0139	Citizen / Public Member Board	HB292	✓	
Michael O'Brien	449-7053	SOS	HB235	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

AN ACT GENERALLY PROHIBITING THE USE OF BUSINESS NAME IDENTIFIERS OR OTHER LANGUAGE IN THE NAME, TITLE, OR ASSUMED NAME OF A BUSINESS ENTITY THAT WOULD STATE OR IMPLY THAT THE BUSINESS ENTITY IS A TYPE OF ENTITY OTHER THAN THE TYPE THAT IT IS; DEFINING "BUSINESS NAME IDENTIFIER"; AND AMENDING SECTIONS 30-13-201, 30-13-202, 35-1-308, 35-2-305, 35-4-206, 35-8-103, 35-10-703, AND 35-12-505, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 30-13-201, MCA, is amended to read:

"**30-13-201. Definitions.** As used in this part, the following definitions apply:

(1) "Assumed business name" means:

~~(a)~~ any business name other than the full, true, and correct name of a person~~; or~~

~~(b) the full, true, and correct name of a limited liability partnership~~.

(2) "Business name identifier" means a word or words used by a business entity in its name or title that describes the type or form of its business. Business name identifiers include but are not limited to corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, and abbreviations of those terms.

~~(2)~~(3) "Person" means any individual, partnership, corporation, limited partnership, limited liability company, limited liability partnership, or other association."

Section 2. Section 30-13-202, MCA, is amended to read:

"**30-13-202. Registration of assumed business name -- when prohibited.** (1) When an application for registration or amendment to the registration of an assumed business name contains an assumed business name ~~which~~ that is the same as or not distinguishable on the record from an assumed business name already registered or from any corporate name, limited partnership name, limited liability company name, limited liability partnership name, trademark, or service mark registered or reserved with the

secretary of state, the secretary of state may not register the assumed business name for which application is made.

(2) ~~When the applicant is other than a corporation, limited partnership, limited liability company, or limited liability partnership, the secretary of state may not register the assumed business name for which application is made if the name applied for contains or there is added at the end of the name the word "corporation", "company", "incorporated", or "limited" or an abbreviation of one of the words.~~ An applicant for an assumed business name may not use a business name identifier that incorrectly states the type of entity that it is or incorrectly implies that it is a type of entity other than the type of entity that it is."

Section 3. Section 35-1-308, MCA, is amended to read:

"**35-1-308. Corporate name.** (1) A corporate name:

(a) must contain the word "corporation", "incorporated", "company", or "limited"; the abbreviation "corp.", "inc.", "co.", or "ltd."; or words or abbreviations of similar meaning in another language; ~~and~~

(b) may not contain business name identifiers, as defined in 30-13-201, or language that states or implies that the corporation is a business other than a corporation; and

~~(b)~~(c) may not contain language that states or implies that the corporation is organized for a purpose or purposes other than those permitted by 35-1-114 and its articles of incorporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of another corporation incorporated or authorized to transact business in this state;

(b) a corporate name reserved or registered under 35-1-309 or 35-1-311;

(c) the fictitious name adopted by a foreign corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state;

(e) the corporate name of a domestic corporation that has dissolved, but only distinguishable for

a period of 120 days after the effective date of its dissolution; and

(f) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in the state.

(4) A corporation, limited liability company, or limited partnership may use the name, including the fictitious name, of another domestic or foreign corporation, limited liability company, or limited partnership that is used in this state if the other corporation, limited liability company, or limited partnership is incorporated or authorized to transact business in this state and the proposed user corporation, limited liability company, or limited partnership:

(a) has merged with the other corporation, limited liability company, or limited partnership;

(b) has been formed by reorganization of the other corporation, limited liability company, or limited partnership;

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation, limited liability company, or limited partnership; or

(d) has obtained written permission from the other corporation, limited liability company, or limited partnership for use of the name and has filed a copy of the grant of permission with the secretary of state.

(5) This chapter does not control the use of fictitious names."

Section 4. Section 35-2-305, MCA, is amended to read:

"**35-2-305. Corporate name.** (1) (a) A corporate name may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by 35-2-117 and its

articles of incorporation.

(b) A corporate name may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the corporation is an entity other than a nonprofit corporation.

(2) Except as authorized by subsections (3) and (4), a corporate name must be distinguishable in the records of the secretary of state from:

(a) the corporate name of a nonprofit or business corporation incorporated or authorized to do business in this state;

(b) a corporate name reserved or registered under Title 35, chapter 1, 35-2-306, or 35-2-307;

(c) the fictitious name of a foreign business or nonprofit corporation authorized to transact business in this state because its real name is unavailable;

(d) the corporate name of a domestic business or nonprofit corporation that has been dissolved, but only distinguishable for a period of 120 days after the effective date of the dissolution; or

(e) any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state.

(3) A corporation may apply to the secretary of state for authorization to use a name that is not distinguishable in the secretary of state's records from one or more of the names described in subsection (2). The secretary of state shall authorize use of the name applied for if:

(a) the other corporation consents to the use in writing and submits an undertaking in a form satisfactory to the secretary of state to change its name to a name that is distinguishable in the records of the secretary of state from the name of the applying corporation; or

(b) the applicant delivers to the secretary of state a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) A corporation may use the name, including the fictitious name, of another domestic or foreign business or nonprofit corporation that is used in this state if the other corporation is incorporated or authorized to do business in this state and the proposed user corporation:

(a) has merged with the other corporation;

(b) has been formed by reorganization of the other corporation; or

(c) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(5) This chapter does not control the use of fictitious names."

Section 5. Section 35-4-206, MCA, is amended to read:

"**35-4-206. Corporate name.** The name of a domestic or foreign professional corporation:

(1) (a) (i) except as provided in subsection (1)(b), must contain the words "professional corporation" or the abbreviation "P.C."; and

(ii) may not contain any other words to indicate the type of business that it is other than "professional corporation" or "P.C."; unless

(b) the name of a foreign corporation contains the words "professional services" or "P.S.";

(2) may not contain any word or phrase that indicates or implies that the corporation is organized for any purpose other than the purposes contained in its articles of incorporation;

(3) may not be the same as or deceptively similar to any assumed business name, limited partnership name, limited liability company name, trademark, or service mark registered or reserved with the secretary of state or to the name of any domestic corporation existing under the laws of this state, any foreign corporation authorized to transact business in this state, a name the exclusive right to which is reserved in the manner provided in the Montana Business Corporation Act, or the name of a corporation that has in effect a registration of its corporate name as provided in the Montana Business Corporation Act. This subsection does not apply if:

(a) the similarity results from the use in the corporate name of personal names of shareholders or former shareholders or of natural persons who were associated with a predecessor entity; or

(b) the corporation files with the secretary of state either the written consent of ~~such~~ the other corporation or holder of a reserved or registered name to use the same or a deceptively similar name and one or more words are added to make ~~such~~ the name distinguishable from ~~such~~ the other name or a certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the corporation to the use of the name in this state.

(4) must conform to rules promulgated by a licensing authority having jurisdiction of a professional service described in the articles of incorporation of the corporation."

Section 6. Section 35-8-103, MCA, is amended to read:

"**35-8-103. Name.** (1) (a) The name of each limited liability company as set forth in its articles of organization must contain the words "limited liability company" or "limited company" or the abbreviations "l.l.c.", "l.c.", "llc", or "lc". The word "limited" may be abbreviated as "ltd.", and the word "company" may be abbreviated as "co.".

(b) The name of a limited liability company as set forth in its articles of organization may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability company is a business other than a limited liability company.

(2) A limited liability company name must be distinguishable on the records of the secretary of state from:

(a) the name of any business corporation, nonprofit corporation, limited partnership, or limited liability company organized or reserved under the laws of this state;

(b) the name of any foreign business corporation, foreign nonprofit corporation, foreign limited partnership, or foreign limited liability company registered or qualified to do business in this state;

(c) any assumed business name, limited partnership name, trademark, service mark, or other name registered or reserved with the secretary of state; and

(d) the corporate name of a domestic corporation that has dissolved but only for a period of 120 days after the effective date of its dissolution.

(3) The use of the name of a limited liability company by another limited liability company or limited partnership is governed by 35-1-308.

(4) Contests over names registered under this section are governed by 35-1-310."

Section 7. Section 35-10-703, MCA, is amended to read:

"**35-10-703. Name of limited liability partnerships.** (1) The name of a limited liability partnership must contain the words "limited liability partnership", the abbreviation "l.l.p." or "llp", or other words or abbreviations that may be required or authorized by the laws of the state in which the partnership is formed, including without limitation "professional limited liability partnership" or the abbreviation "p.l.l.p." or "pllp".

(2) The name of a limited liability partnership may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited liability partnership is other

than a limited liability partnership."

Section 8. Section 35-12-505, MCA, is amended to read:

"**35-12-505. Name.** (1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) must contain the words "limited partnership", the abbreviation "l.p.", or the designation "lp";

(b) may not contain the name of a limited partner unless:

(i) it is also the name of a general partner; or

(ii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain business name identifiers, as defined in 30-13-201, or other language that states or implies that the limited partnership is other than a limited partnership; and

~~(c)~~(d) must be distinguishable on the record from the name of any corporation, limited partnership, or limited liability company organized under the laws of this state or licensed or registered as a foreign corporation or limited partnership in this state.

(2) The use of a limited partnership's name by another corporation, limited partnership, or limited liability company is governed by 35-1-308."

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